IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 2935 of 2007()

CRMP.3337/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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REVN. PETITIONER: CLAIM PETITIONER

URUMIES,
HOUSE NO.3/64, APPADAN HOUSE, KOOVAPPADY P.O.,
PERUMBAVOOR, ERNAKULAM DISTRICT.

BY ADV. SRI.K.ANAND

RESPONDENTS: RESPONDENTS/COMPLAINANT

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SUB INSPECTOR,
KALADY POLICE STATION.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2935 OF 2007

Dated this the 9th day of August, 2007

O R D E R

The revision petitioner, who is the registered owner of an autorikshaw bearing registration No.KL7 AU/7465, allegedly involved in Crime No.545/07 of Kalady Police Station for an offence punishable under section 55(i) of the Abkari Act sought interim custody of the vehicle under section 451 Cr.P.C. His application was rejected by the JFCM, Perumbavoor on the ground that eventhough the seizure of the vehicle was reported to the Magistrate since the vehicle has been ordered to be produced before the authorised officer for disposal as per section 67B of the Abkari Act, interim custody of the vehicle cannot be given.

2. The learned Public Prosecutor supported the order of the learned Magistrate by submitting that under section 67B of the Abkari Act there is a statutory mandate for production before the authorised officer for confiscation of the vehicle used for transporting contraband liquor and the petitioner can only oppose the proposed confiscation and in the event of an adverse order passed by the authorised officer, he can only prefer an appeal under section 67E of the Act and that interim custody of the

vehilce which has not been produced before the criminal court, cannot be granted. The learned Public Prosecutor further submitted that the above mandate under section 67B is notwithstanding anything contained in the Abkari Act or any other law for the time being and, therefore, applications under sections 451 or 457 Cr.P.C. for interim custody before the Magistrate are necessarily foreclosed.

4. I am afraid that I cannot agree with the above submissions. It is true that the vehicle in this case has not been produced before the Magistrate. But the seizure has been reported to the Magistrate in view of the registration of crime No.545/07 for an offence punishable under section 55(i) of the Abkari Act. Reporting of the seizure can only be under section 102(3) Cr.P.C. As it is conceded by the learned Public Prosecutor that the Abkari Act which is a provisional legislation has not received the assent of the President of India, the non-obstante clause under section 67B of the Abkari Act cannot override the provisions of the Code of Criminal Procedure in view of Article 254 of the Constitution of India. In such a situation an application for interim custody should be maintainable under section 457 Cr.P.C.

which was the provision of law invoked by the revision petitioner in M.P.3337/07 before the court below. It is now well settled that the order under section 457 Cr.P.C. is not an interim order. [See ***Joshy Vs. State*** (1979-1985 KUC 367)]. If so, the bar of revision under section 397(2) Cr.P.C. does not operate. No doubt, the interim custody can only be subject to the final orders to be passed under section 67B of the Abkari Act. Accordingly, the impugned order is set aside and MP.3337/07 will stand allowed on the petitioner furnishing a Bank guarantee for the value of the autorikshaw as assessed by the authorised officer and on undertaking before the Magistrate to produce the same as and when called upon and on such other conditions which the Magistrate may deem fit.

This revision is allowed as above.

(V. RAMKUMAR, JUDGE)

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